

REMARKS

Claims 1 to 43 are pending. Claims 31-46 have been added.

Independent claims 1, 11, and 21, along with their dependent claims, have been rejected under U.S.C. §102(e) as being unpatentable over Smith (U.S. 2002/0128898). Applicants request reconsideration and withdrawal of this rejection because the relevant portions of Smith relied upon by the Examiner to reject claims 1, 11, and 21, and their dependent claims, are not prior art.

Smith is a publication of Patent Application No. 09/781,523 (the Smith application) having a filing date of Feb. 8, 2001, which is after the October 25, 2000 filing date of the present application. Therefore, absent showing of disclosure within an earlier filed continuation application, Smith fails to qualify as statutory prior art under 35 U.S.C. §102(e). As indicated in greater detail below, although the Smith application claims priority to the earlier-filed Hamlin patent (U.S. Patent No. 6,477,504 issued from Application No. 09/034,774 filed on March 2, 1998), its continuation-in-part status reveals that portions of Smith are not described by the earlier Hamlin patent, including the portions of Smith relied upon by the Examiner in rejecting claims 1, 11 and 21, and their dependents. Consequently, the relied-upon portions of Smith are only entitled to a filing date of Feb. 8, 2001, rendering the disclosure disqualified as prior art, under §102(e).

Specifically, Hamlin discloses a method and apparatus for automating surveys over a network system. Hamlin, however, does not disclose the mechanics of dynamically assigning a survey to a respondent. Smith discloses the mechanics of dynamically assigning a survey to a respondent and selecting a particular survey for a respondent (see, for example, the abstract and paragraphs 0050-0053, 0143-157, and 0178-0180).

In rejecting claims 1, 11, and 21, the Examiner has relied on paragraphs 0052-0053, 0145, 0148, 0149, 0156, 0157, 0178, and 0180 of Smith as disclosing the random number generator of claims 1 and 21 and the number generation step of claim 11. However, the aforementioned paragraphs are absent from Hamlin, and, therefore, have a priority date after the filing date of the present application. Accordingly, these paragraphs may not be used as

Applicant : America Online, Inc.
Serial No. : 09/695,955
Filed : October 25, 2000
Page : 12 of 12

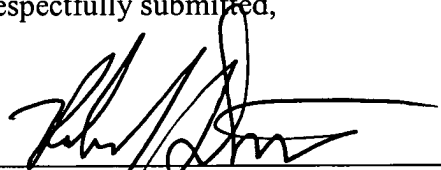
Attorney's Docket No.: 00975-491001 / AMOL-0001

evidence of prior art disclosing the recited random generator or number generation. For at least this reason, applicants request reconsideration and withdrawal of the rejection of claim 1, 11, and 21, and their dependent claims.

Enclosed is a \$288 check for excess claim fees and a \$110 check for the Petition for Extension of Time fee. Please apply any other charges or credits to deposit account 06-1050.

Respectfully submitted,

Date: 9/28/04



Roberto J. Devoto
Reg. No. 55,108

Fish & Richardson P.C.
1425 K Street, N.W.
11th Floor
Washington, DC 20005-3500
Telephone: (202) 783-5070
Facsimile: (202) 783-2331